

TITLE 11 CONSUMER PROTECTION DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL

ARTICLE 1. TELEPHONE SOLICITATIONS

Rule 1. Definitions

11 IAC 1-1-1 Applicability

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 24-4.7-2

Sec. 1. The definitions set forth at IC 24-4.7-2, as supplemented in this rule, apply throughout this article and 11 IAC 2. (*Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-1; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1854; readopted filed Jun 9, 2008, 11:27 a.m.: 20080702-IR-011080326RFA; filed Jul 9, 2012, 2:56 p.m.: 20120808-IR-011110583FRA*)

11 IAC 1-1-2 "Contract made under a telephone sales call" defined

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 24-4.7-4-4; IC 24-4.7-4-5

Sec. 2. For the purposes of IC 24-4.7-4-4 and IC 24-4.7-4-5, a "contract made under a telephone sales call" does not include a contract for the sale, purchase, or mortgage of real estate if:

(1) the sale, purchase, or mortgage of real estate is not completed; and

(2) the payment or authorization of payment is not required;

solely as a result of the telephone sales call. (*Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-2; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1854; readopted filed Jun 9, 2008, 11:27 a.m.: 20080702-IR-011080326RFA*)

11 IAC 1-1-3 "Division" defined

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 24-4.7-2-4

Sec. 3. As used in this article and 11 IAC 2, "division" refers to the consumer protection division of the office of the attorney general. (*Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-3; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1854; readopted filed Jun 9, 2008, 11:27 a.m.: 20080702-IR-011080326RFA; filed Jul 9, 2012, 2:56 p.m.: 20120808-IR-011110583FRA*)

11 IAC 1-1-3.5 "Existing debt or contract" defined

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 24-4.7-1-1

Sec. 3.5. (a) For the purposes of IC 24-4.7-1-1, "existing debt or contract" means:

(1) a sum of money currently owed by the consumer who receives the telephone call to the telephone solicitor making the call or to the person who contracted, hired, or authorized the telephone solicitor making the call; or

(2) a legally binding agreement currently in effect between the consumer who receives the call and the telephone solicitor making the call or the person who contracted, hired, or authorized the telephone solicitor making the call.

(b) For the purposes of IC 24-4.7-1-1, an "existing debt or contract" does not include:

(1) an existing debt that the consumer has with a person other than the telephone solicitor making the call or the person who contracted, hired, or authorized the telephone solicitor making the call; or

(2) an existing contract that the consumer has with a person other than the telephone solicitor making the call or the person who contracted, hired, or authorized the telephone solicitor making the call.

(*Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-3.5; filed Feb 17, 2003, 9:54 a.m.: 26 IR 2300;*)

readopted filed Jun 9, 2008, 11:27 a.m.: 20080702-IR-011080326RFA)

11 IAC 1-1-4 "Express request" defined

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 24-4.7-1-1

Sec. 4. For the purposes of IC 24-4.7-1-1, "express request" means a specific grant of authority made by a residential telephone subscriber at a verifiable date and time authorizing a telephone solicitor to make a telephone sales call to the residential telephone subscriber's residential telephone number. The grant of authority:

- (1) shall not be included as a condition of a contract for the sale of consumer goods or services;
- (2) shall not be given by a person other than the residential telephone subscriber to whom the call will be made; and
- (3) if in writing, must be set forth in a document that:
 - (A) is separate from any written contract between the residential telephone subscriber and the telephone solicitor authorized to make the telephone sales call;
 - (B) is printed in 12-point boldface type or larger; and
 - (C) contains only the grant of authority.

(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-4; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1854; readopted filed Jun 9, 2008, 11:27 a.m.: 20080702-IR-011080326RFA)

11 IAC 1-1-4.5 "Indiana identification number" defined

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 24-4.7

Sec. 4.5. As used in this article, 11 IAC 2, and IC 24-4.7, "Indiana identification number" means a number that is:

- (1) assigned to, or issued or used in connection with, telecommunications service provided to a consumer; and
- (2) associated with an Indiana account by the provider of the telecommunications service.

(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-4.5; filed Jul 9, 2012, 2:56 p.m.: 20120808-IR-011110583FRA)

11 IAC 1-1-4.7 "Interconnected VOIP service" defined

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 24-4.7

Sec. 4.7. As used in this article and 11 IAC 2, and for the purposes of IC 24-4.7, "interconnected VOIP service" means a service that:

- (1) enables real-time, two-way voice communications;
- (2) requires a broadband connection from the user's location;
- (3) requires Internet protocol-compatible customer premises equipment (CPE); and
- (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-4.7; filed Jul 9, 2012, 2:56 p.m.: 20120808-IR-011110583FRA)

11 IAC 1-1-5 "Person" defined

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 24-4.7

Sec. 5. As used in this article and 11 IAC 2, and for the purposes of IC 24-4.7, "person" means any of the following:

- (1) An individual.

- (2) An incorporated or unincorporated organization.
- (3) An association.
- (4) Any other legal entity.

(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-5; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1855; readopted filed Jun 9, 2008, 11:27 a.m.: 20080702-IR-011080326RFA; filed Jul 9, 2012, 2:56 p.m.: 20120808-IR-011110583FRA)

11 IAC 1-1-6 "Residential telephone number" defined

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7

Sec. 6. As used in this article and 11 IAC 2, and for the purposes of IC 24-4.7, "residential telephone number" means a landline, wireless, prepaid wireless, or interconnected VOIP service telephone number held or used by a residential telephone subscriber. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-6; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1855; readopted filed Jun 9, 2008, 11:27 a.m.: 20080702-IR-011080326RFA; filed Jul 9, 2012, 2:56 p.m.: 20120808-IR-011110583FRA)*

11 IAC 1-1-7 "Residential telephone subscriber" defined

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7-2-2

Sec. 7. As used in this article and 11 IAC 2, and for the purposes of IC 24-4.7, "residential telephone subscriber" means an individual who:

- (1) subscribes to or for whose use another person subscribes to telephone service associated with the individual's residential address, including:
 - (A) landline;
 - (B) wireless; or
 - (C) interconnected VOIP service; or
- (2) is a user or purchaser of prepaid wireless calling service described in IC 24-4.7-2-2(b).

The term includes the individual's spouse. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-7; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1855; readopted filed Jun 9, 2008, 11:27 a.m.: 20080702-IR-011080326RFA; filed Jul 9, 2012, 2:56 p.m.: 20120808-IR-011110583FRA)*

11 IAC 1-1-8 "Telephone privacy list" defined

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7-3

Sec. 8. As used in this article and 11 IAC 2, "telephone privacy list" refers to the no telephone sales solicitation listing published by the division under IC 24-4.7-3. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-8; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1855; readopted filed Jun 9, 2008, 11:27 a.m.: 20080702-IR-011080326RFA; filed Jul 9, 2012, 2:56 p.m.: 20120808-IR-011110583FRA)*

Rule 2. Telephone Solicitors' Maintenance of Records Related to Telephone Sales Solicitations

11 IAC 1-2-1 Telephone solicitors' required records

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7

Sec. 1. A telephone solicitor subject to IC 24-4.7 shall keep the following information as part of its business records:

- (1) the name and telephone number of each consumer contacted by a telephone sales call;

- (2) all substantially different advertising, brochures, telemarketing scripts, and promotional materials used in its solicitation of the consumer;
- (3) all express requests authorizing the telephone solicitor to contact the consumer; and
- (4) for all current and former employees directly involved in telephone sales, the employee's:
 - (A) name;
 - (B) last known home address;
 - (C) last known telephone number; and
 - (D) job title(s).

(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-2-1; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1855; readopted filed Jun 9, 2008, 11:27 a.m.: 20080702-IR-011080326RFA)

11 IAC 1-2-2 Length of time telephone solicitors must retain records

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7

Sec. 2. A telephone solicitor shall keep the information in section 1 of this rule for two (2) years following the date the information first becomes part of its records. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-2-2; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1855; readopted filed Jun 9, 2008, 11:27 a.m.: 20080702-IR-011080326RFA)*

11 IAC 1-2-3 Attorney general's access to solicitor's records

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7

Sec. 3. Within ten (10) days of an oral or written request by the division, a telephone solicitor shall make the records it keeps pursuant to this rule available for inspection and copying by the attorney general during normal business hours. This section does not limit the attorney general's ability to inspect and copy material pursuant to any other means authorized by law. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-2-3; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1855; readopted filed Jun 9, 2008, 11:27 a.m.: 20080702-IR-011080326RFA)*

Rule 3. Enforcement of Violations of IC 24-4.7

11 IAC 1-3-1 Mitigating factors

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7-3-2; IC 24-4.7-4; IC 24-4.7-5

Sec. 1. In any proceeding brought against a telephone solicitor by the attorney general under IC 24-4.7-5, the attorney general may consider the following as mitigating factors in the attorney general's decision to seek civil penalties under IC 24-4.7-5:

- (1) That the defendant has obtained, from the division or the agent with which the division has contracted under IC 24-4.7-3-2, the most recently published telephone privacy list.
- (2) That the defendant has maintained the records required by 11 IAC 1-2-1.
- (3) That the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of IC 24-4.7-4.
- (4) That the defendant has not previously been found to have violated IC 24-4.7.

(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-3-1; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1855; readopted filed Jun 9, 2008, 11:27 a.m.: 20080702-IR-011080326RFA)

Rule 4. Charitable Solicitor's Disclosure

11 IAC 1-4-1 Charitable solicitor's disclosure

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 23-7-8-1; IC 24-4.7-4-2

Sec. 1. The attorney general shall consider a person engaged in noncommercial speech, including a professional fundraiser consultant or solicitor as defined at IC 23-7-8-1 who calls on behalf of such charitable organization, to have sufficiently complied with IC 24-4.7-4-2 if the person makes the disclosures required by IC 24-4.7-4-2 before requesting a donation. (*Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-4-1; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1856; readopted filed Jun 9, 2008, 11:27 a.m.: 20080702-IR-011080326RFA*)

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